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Congress of the United States
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COMMITTEE ON WAYS AND MEANS

WASHINGTON, DC 20515

SUBCOMMITTEE ON HEALTH

December 20, 2002

The Honorable Janet Rehnquist
Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

Dear Inspector General Rehnquist:

As I am sure you are aware, multiple concerns regarding Tenet Healthcare Corporation have recently come to light. I appreciate the work your staff is doing to investigate the concerns. I expect your office will pursue all legal remedies to ensure the integrity of the Medicare program and the best possible medical care for Medicare beneficiaries.

In pursuing the current allegations against Tenet, I believe it is important to review prior oversight efforts with respect to the company. Some of the current concerns are highly reminiscent of behavior by Tenet's predecessor, National Medical Enterprises (NME). In 1994, NME admitted to criminal and civil violations of federal law and agreed to pay nearly \$400 million in fines, which at the time was the largest health care fraud settlement in history. Soon thereafter, the company changed its name to Tenet Healthcare Corporation. As part of the settlement, Tenet was subject to a five-year Corporate Integrity Agreement (CIA) that was intended to allow the company an opportunity to demonstrate that it "can be trusted to deal fairly and honestly with the Government" and to assure that the company "possesses, in the future, the high degree of business integrity required of a provider participating in federally-funded health care programs."

I am troubled that many of the current allegations against Tenet appear to stem from behavior that should have been detected, reported, and remedied under that CIA. I would like to work with your office to review Tenet's compliance with the CIA and the government's enforcement of it. By doing so, I hope we can improve fraud prevention, detection, and correction efforts against Tenet and all health care providers going forward.

Tenet agreed to undergo significant monitoring and systemic improvement under the terms of the CIA. Among other requirements, the CIA required Tenet to contract with independent organizations to periodically review the medical necessity and quality of services the company rendered to beneficiaries of government programs and the company's billing practices. The company was to report and remedy any material violations found during these reviews. Tenet was also supposed to report to the US Department of Health and Human Services (HHS) its policies and procedures regarding its payments to physicians, as well as the payments made. Payments to physicians were only supposed to be made pursuant to contracts approved by outside counsel. Each year, the company was to submit a report detailing its compliance with the CIA and federal program requirements.

The CIA also included requirements for the company to investigate and report to HHS any credible evidence of misconduct that might constitute a violation of civil or criminal law. The evidence to be reported included "evidence relating to misconduct by any person employed by or under contract with NME or the Government, [including] evidence disclosed to NME from any source." The company was also required to take appropriate corrective action based on its investigation.

Contrary to these CIA requirements, it appears that Tenet had evidence of such misconduct and failed to address it for years. According to an FBI affidavit, various CEOs and administrators of Tenet's Redding Medical Center in Redding, CA were alerted multiple times, dating back to at least 1997, to the possibility that medically unnecessary heart procedures were being performed at the facility. Despite requests from members of the medical community, Tenet apparently never reviewed the concerns or hired outside reviewers to do so. The physicians allegedly performing the unnecessary procedures served as the director of cardiology and chairman of cardiac surgery at Tenet's facility. According to Medicare records, 167 Medicare patients died under these physicians' care from December 1998 to July 2002. The physicians are now the subject of federal criminal and civil investigations by your office and others. It seems clear that under the CIA, Tenet should have investigated the evidence of unnecessary heart procedures, reported the evidence to HHS, and taken appropriate corrective action.

Tenet appears to have similarly failed to monitor and correct its billing practices as required under the CIA. Since at least 1999, Tenet has employed what the company's CEO Jeffrey Barbakow calls "an aggressive pricing strategy" that has generated much higher than average Medicare outlier payments for the company. Mr. Barbakow maintains that he did not know about this aggressive pricing strategy, implying he learned of it as the public did, through a Wall Street analysis and the announcement of your office's audit. He told investors, "Once I became fully aware of the aggressiveness

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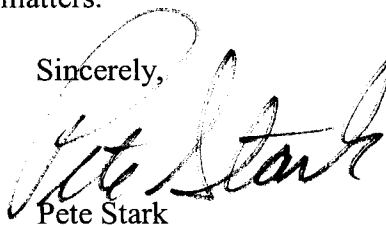
of pricing strategies in certain markets and of the corollary impact on outlier payments, I realized that the company's credibility would be shattered. While this approach is legal, it is not the way I want to run this company, and it reflects poorly on our hospitals in the communities we serve." While I await your office's assessment as to whether the company's billing practices were legal, it seems troubling that the CEO of the company was not at least aware of the practices, especially during a time when the company was supposedly complying with a CIA that required them to hire an outside organization to review and report on those practices.

Another potential example of Tenet's failure to meet its obligations under the CIA is emerging today. I understand the FBI has recently searched Tenet's Alvarado Hospital Medical Center in San Diego, CA for evidence related to the facility's payments to and relationships with physicians. Under the CIA, much of this information should have been reported to HHS and any potentially illegal activities should have been identified and corrected.

Again, I expect that your office will continue its various investigations and audits of Tenet and fully pursue all legal remedies against the company, including any arising from violations of their prior settlement with the federal government. My focus in writing to you today is to attempt to learn from this experience as we move forward with fraud, waste, and abuse efforts. When health care providers such as Tenet violate federal program requirements, it is not sufficient to extract one-time fines yet allow similar behavior to continue under a new corporate name. We must demand and have the systems in place to ensure that improper or illegal behavior is stopped and that program standards are met on an on-going basis. This is particularly important now as the federal government enters into another settlement with the largest for-profit hospital chain in the country, HCA, and before any new settlement with Tenet is broached.

I look forward to working with you to review this issue and undertake whatever legislative or administrative action is appropriate. Toward that end, I am requesting that you forward to me at your earliest convenience copies of the Standards of Conduct that Tenet was to adopt pursuant to its Corporate Integrity Agreement, the names of all outside organizations Tenet contracted with to fulfill its review requirements, copies of all reports submitted by those review organizations, and copies of all annual compliance reports submitted by Tenet. I am also requesting a meeting to review these and similar documents and to discuss oversight improvements. Please contact Terri Shaw of my staff on 225-4021 to arrange these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Stark", written over a horizontal line.

Pete Stark
Ranking Member